IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 60 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODBHAI DAHYABHAI PATEL - Appellant(s)

Versus

A'BAD MUNICIPAL TRANSPORT SERVICE - Defendant(s)

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Appearance :

MR PR JANI for Petitioner No(s).: 1.
MR BP TANNA for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE A.L.DAVE

Date : 14/07/2005

ORAL JUDGMENT

1. This appeal arises out of a judgment and award rendered by City Civil Court No.18, functioning as Motor Accident Claims Tribunal No.4 (Auxiliary), Ahmedabad, in Motor Accident Claim Petition No. 190 of 1985, on 22nd

September, 1987.

2. The appellant is the claimant, who had claimed an amount of Rs.25,000/- on account of personal injury sustained by him and damage caused to his auto-rickshaw in a vehicular accident that occurred on the 6th October, 1985, at about 2.00 P.M., Near Nehru Bridge, Ahmedabad. As per the say of the appellant, while he was driving his auto-rickshaw No.GRS 3898 and was proceeding towards Nehru Bridge from the junction, bus bearing No.GRS 8744, owned by the respondent and driven by its driver, dashed against his auto-rickshaw, which resulted into extensive damage to the auto-rickshaw and injuries to the claimant. The claimant, therefore, preferred a claim of Rs.25,000/- as compensation. The claim was opposed to by the respondent-opponent. However, considering the rival side cases and the evidence led by them, the Tribunal came to a conclusion that the claimant was entitled to a total compensation of Rs.6750/- with running interest at the rate of 9% per annum from the date of filing of the claim application till realization with proportionate costs of the application.

3. Aggrieved by the said judgment and award, present appeal is preferred by original claimant.

4. The grievance of the appellant is that the Tribunal has not properly appreciated the evidence before it and has not assessed the damages suffered by the appellant-claimant.

5. Ms. S.R. Shelat, appearing for the appellant, submitted that the Tribunal has observed in terms that the auto-rickshaw was extensively damaged. It is indicated, by way of evidence, by the appellant that bills worth Rs.7575/- for repair of the auto-rickshaw have been produced, besides photographs of the auto-rickshaw to show the nature of damage caused to the auto-rickshaw. Despite that, the Tribunal has awarded only Rs.5000/- by way of damages for the damage caused to the auto-rickshaw. She submitted that the Tribunal has awarded only Rs.500/- under the head of pain, shock and suffering. She submitted that, though the claimant did not suffer a fracture, he had to remain in hospital for one day, he had to suffer mental agony because his auto-rickshaw was badly damaged and he was rendered jobless for some time and, therefore, the Tribunal ought to have awarded Rs.5000/- under the head of pain, shock and suffering. Ms. Shelat also submitted that under the head of Medical Expenditure, only Rs.50/- are awarded and under the head of actual loss

of income, only Rs.1200/- are awarded, in spite of the fact that the auto-rickshaw was badly damaged and, therefore, the claimant suffered a loss of Rs.1500/- per month, which he was earning from his auto-rickshaw. She submitted that, though a claim of damages towards rent of the auto-rickshaw for a period of four months was made by the claimant, which he was required to pay till his rickshaw got repaired, the Tribunal has awarded only Rs.1200/- as damages for the actual loss of income. She submitted that the appeal may, therefore, be allowed.

6. Learned Advocate, Mr. Ramakrishnan, appearing for the respondent-AMTS on behalf of Mr. B.P. Tanna, submitted that the award by the Tribunal is just and proper. According to him, the claimant could not have claimed actual loss of income under two heads, (1) for the rent charges of another auto-rickshaw and (2) for total loss of income for the period under which his auto-rickshaw was under repairs. He submitted that, while awarding compensation for damage to property, the Tribunal has taken into consideration all relevant aspects. Likewise, in respect of pain, shock and suffering also, there was hospitalization for only one day and bill worth Rs.10/- is produced. Even according to the claimant, he started plying auto-rickshaw by hiring from somebody, which would

mean that there was no serious injury caused to him. Therefore, the award is just and proper under the head of pain, shock and suffering and medical expenditure. He, therefore, submitted that the appeal may be dismissed.

7. This Court has gone through the judgment and award of the Tribunal and has examined the reasoning adopted by the Tribunal. This Court has also examined the record and proceedings.

8. So far as compensation under the head of damage to property is concerned, it is not in dispute that the claimant has produced bills for Rs.7575/- for the repair of the auto-rickshaw. The photographs indicate that the auto-rickshaw was extensively damaged. The entire body shell was damaged. There could be some repairs, for which the claimant may not have got bills or may have been misplaced. The damage to property, therefore, can be assessed reasonably at Rs.8000/-

9. So far as damages on account of actual loss of income is concerned, the claimant has claimed that he was earning Rs.1500/- per month and, therefore, as long as his rickshaw could not be repaired and plied again, he should be paid compensation on that rate. On the other hand, he

also pleaded that he had hired rickshaw while his own rickshaw was under repairs and was paying a rent of Rs.20 per day and this he did for a period of about four months. The Tribunal has taken into consideration these aspects. Looking to the facts of the case, in the opinion of this Court, the extensive damage caused to the auto-rickshaw must have kept it off the road for a period of about three months. Differently put, the claimant could not have plied his own auto-rickshaw for that period and, therefore, it can be accepted that the claimant must have plied rickshaw by hiring from somebody else at the rate of Rs.20 per day, which would entitle him to a compensation of Rs.1800/- under the head of actual loss of income because that would be his net loss.

10. Coming to compensation under the head of pain, shock and suffering, though the claimant has claimed an amount of Rs.5000/-, looking to the nature of injuries sustained by him, as can be seen from the medical certificates of V.S. Hospital, the injuries are simple in nature. However, he must have suffered shock because of the accident and damage to his own property. He was in hospital for one day and there was tenderness on various parts of his body. Keeping all these factors, the claimant would be entitled to a global amount of Rs.1500/-, by way

of damages under the head of pain, shock and suffering. The claimant, therefore, would be entitled to a total compensation of Rs.11,300/-, which can be considered just, reasonable and proper.

11. A grievance was made with full force in respect of rate of interest of adopted by the Tribunal. In the opinion of this Court, when interest is awarded at the rate of 9% and award of rate of interest is discretionary, no interference is called for in respect of rate of interest.

12. In the result, the appeal stands partly allowed. The judgment and award of the Tribunal, impugned herein, shall stand modified to the extent that instead of Rs.6750/- awarded by the Tribunal, the appellant-original claimant would be entitled to a total amount of Rs.11,300/- (Rupees eleven thousand and three hundred only) with running interest at the rate of 9% per annum from the date of filing of the application till realization and proportionate costs of the application. Rest of the award of the Tribunal remains intact. No costs.

[A. L. DAVE, J.]

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